

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

PACIFIC CAPITAL, L.P., a
Delaware limited partnership,

Plaintiff,

vs.

Case No.: 2:05-CV-103

EMERGYSTAT, INC., a Mississippi
corporation, SOUTHLAND HEALTH
SERVICES, LLC, a Mississippi limited
liability company, GLENN CRAWFORD,
JOSEPH DONOVAN, CRAIG PANTER,
LARRY LUNAN, BAD TOYS HOLDINGS,
INC., a Nevada corporation, ROY JOSEPH
CERONE and GENERAL ELECTRIC
CAPITAL CORPORATION, a Delaware
corporation,

Defendants.

**MOTIONS FOR VOLUNTARY DISMISSAL, FURTHER EXTENSION
OF TIME, AND MEMORANDUM IN SUPPORT OF MOTIONS**

I

MOTIONS

The Plaintiff herein, Pacific Capital, LP (“Pacific”) hereby moves the Court pursuant to FED. R. CIV. P. 41(a) for an Order of Voluntary Dismissal, without prejudice, in this Action. In conjunction with the Motion for Voluntary Dismissal, Pacific further moves the Court to extend the time for Pacific’s response to the pending Motions to Dismiss filed by various

Defendants in this Action so as to expire ten (10) days from and after the Court's ruling on the Motion for Voluntary Dismissal.

II

ARGUMENT AND AUTHORITIES

Pacific has elected not to pursue its claims arising under the Racketeering Influenced Corrupt Organizations (RICO) Act. Its claims under this Act are the lynchpin of federal jurisdiction in this Action. All of its other claims arise under state law. Accordingly, it is in the interest of judicial economy, in the long run, and will spare the parties considerable time and expense if Pacific is permitted to voluntarily dismiss its Action in this Court and to refile it, without the RICO claims, in a state court of competent jurisdiction.

Dismissal under Rule 41(a)(2) rests within the sound discretion of the trial court. *See Grover v. Eli Lilly and Co.*, 33 F.3d 716 (6th Cir. 1994). The United States Court of Appeals for the Sixth Circuit lists the following criteria for courts facing a Rule 41(a)(2) motion:

In determining whether a defendant will suffer plain legal prejudice, a court should consider such factors as the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.

Id. at 718.

Dismissal will conserve judicial resources and minimize expense to all parties. None of the Defendants would be prejudiced by the granting of this Motion. This case is in its infancy. Most Defendants have not even answered, although several have filed Motions to Dismiss. Pacific believes it can successfully meet these Motions by argument, authority and pleading amendments. For the reasons suggested above, it would be more efficient for Pacific to do so in

a state court forum. No party has invested time and expense in discovery or trial preparation to this point. There is no pending Motion for Summary Judgment. Pacific respectfully insists its Motion is well taken and should be granted.

In the event the Court declines to grant the Motion for Voluntary Dismissal, Pacific respectfully requests additional time in which to respond to the various Motions to Dismiss. All of the Defendants have enjoyed liberal pleading extensions in this case, and Pacific's modest request for further extension of time to respond to the pending Motions is reasonable.

Respectfully submitted,

PACIFIC CAPITAL, LP, Plaintiff

By: /s/ Robert L. Arrington
Robert L. Arrington, Attorney
BOPR Number 001108

By: /s/ Russell W. Adkins
Russell W. Adkins, Attorney
BOPR Number 014230

OF COUNSEL:

Wilson Worley Moore Gamble & Stout, P. C.
2nd Floor, Eastman Credit Union Building
2021 MeadowView Lane
P. O. Box 88
Kingsport, TN 37662
Telephone: (423) 732-0400

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2005, a copy of the foregoing Motions for Voluntary Dismissal, Further Extension of Time, and Memorandum in Support of Motions was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. mail. Parties may access this filing through the Court's electronic filing system.

s/ Robert L. Arrington

Robert L. Arrington, Attorney

TN BPR #001108

Wilson Worley Moore Gamble & Stout, P. C.

P. O. Box 88

Kingsport, TN 37662

(423) 723-0400